client.[4] Although that case can be distinguished on the ground that the plaintiff was not reasonable in relying on the opinion, there are dicta to the effect that no such action will lie.[5] Nevertheless, from principles laid down in analogous cases it would seem that the demurrer in the present case should have been overruled.

The problem depends on whether or not there is a duty to use care as to the accuracy of representations. Undoubtedly such a duty does not exist under all circumstances, but a review of the decisions makes it equally certain that at times such a duty does exist. There may be a duty imposed by statute, as in the case of recording clerks. Then if the clerk negligently fails to record a mortgage, he is liable to a plaintiff who relied on the record to his damage.[6] And apart from statute, in this country telegraph companies are considered to owe such a duty to the public that the recipient of a telegram may recover for losses caused by negligent mistakes made in transmission.[7] The courts also find there is a breach of duty where the misrepresentation imperils the lives of others.[8] An attempt has been made to confine the duty to use care in making representations to cases where "the act is one imminently dangerous to the lives of others or is an act performed in pursuance of some legal duty."[9] Other decisions, however, show that this limitation is not sound. Physicians have been held liable to persons with whom there was no privity of contract for the results of negligent opinions which were not imminently dangerous to life.[10] It has even been held that a druggist is similarly liable for negligently and falsely representing a hair tonic as harmless.[11] The position of the abstract company can be distinguished only on the ground that the damage caused is pecuniary instead of physical, and such a distinction seems untenable. In both cases the plaintiffs were reasonable in relying on the statement; in both the defendants knew persons such as the plaintiffs would rely on the statements and would probably be damaged if the statements were false. It is submitted, therefore, that a similar duty to use care should be imposed on the defendants in both cases.[12]

RECENT CASES.

ADMIRALTY — DECREES — CHANGE IN TITLE IN CONDEMNED PRIZE. — The plaintiff sued on a policy of marine insurance for loss of his ship by perils of the sea. The ship was captured during the Russo-Japanese war by a Japanese cruiser, but was wrecked on the Japanese coast before reaching port. Subsequently the wreck was condemned as a prize. *Held*, that the insured cannot recover, because the ship was lost by capture at the time of its seizure irre-

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[4] Fish *v.* Kelly, 17 C. B. (N. S.) 194.

[5] See Angus *v.* Clifford, [1891] 2 Ch. 449, 470; Le Lievre *v.* Gould, [1893] 1 Q. B. 491, 501.

[6] Appleby *v.* State, 45 N. J. L. 161.

[7] Western Union Tel. Co. *v.* Dubois, 128 Ill. 248.

[8] Thomas *v.* Winchester, 6 N. Y. 397. The defendant who negligently sold a dangerous drug as harmless was held liable to a third party with whom there was no privity of contract.

[9] Savings Bank *v.* Ward, *supra*, 206. See 57 Am. Dec. 461, n.

[10] Edwards *v.* Lamb, 69 N. H. 599; Harriott *v.* Plimpton, 166 Mass. 585.

[11] George *v.* Skivington, L. R. 5 Exch. 1.

[12] *Cf.* 14 HARV. L. REV. 184–99.

spective of whether the title which later passed by the sentence of condemnation related back to that time. *Andersen* v. *Marten*, 24 T. L. R. 208 (Eng., Ct. App., Dec. 18, 1907).

For a criticism of the fiction of relation of title on which the case was decided in the lower court, see 21 HARV. L. REV. 55.

BANKRUPTCY — POWERS AND DUTIES OF TRUSTEE — LIABILITY FOR NEGLIGENT FAILURE TO COLLECT OUTSTANDING ASSET. — A trustee in bankruptcy neglected to prosecute a disputed claim to goods of the bankrupt in the possession of another. A creditor excepted on this ground to the trustee's final account. *Held*, that the trustee, if found negligent, may be charged with the value of the goods. *In re Reinboth*, 157 Fed. 672 (C. C. A., Second Circ.).

The National Bankruptcy Act makes no express provision for charging a trustee for negligence. His neglect may be cause for removal or for withholding compensation. *In re Morse*, Fed. Cas. No. 9852; see *In re Newcomb*, 32 Fed. 826. And he is liable for loss to the estate caused by his negligent management. *In re Newcomb, supra.* His liability for negligently failing to get in an asset does not seem to have been passed upon before in this country; but such liability would naturally result from his duty to collect the property of the estate, under § 47*a* (2) of the Act. An English case, on similar facts, reaches the same result as the present decision. *Ex parte Ogle*, L. R. 8 Ch. 711. Moreover an administrator, or a trustee under a settlement, is liable for assets of the estate which he does not use ordinary diligence to collect. *Tuttle* v. *Robinson*, 33 N. H. 104; *Speakman* v. *Tatem*, 48 N. J. Eq. 136. A trustee in bankruptcy should be required to exercise a like degree of care. See *Speakman* v. *Tatem, supra.*

BANKRUPTCY — PROPERTY PASSING TO TRUSTEE — TRUSTEE'S RIGHT IN PROPERTY OF BANKRUPT SOLD FOR TAXES BEFORE ADJUDICATION — Before adjudication property of a bankrupt was sold for taxes. After the statutory period a deed was given without applying to the bankruptcy court or joining the trustee. *Held*, that the deed is void. *In re Epstein*, 156 Fed. 42 (C. C. A., Eighth Circ.).

If property has been put into a receivership, a tax deed thereof, though for taxes previously accruing, is void unless issued with the sanction of the court appointing the receiver. *Johnson* v. *Southern Building Ass'n*, 132 Fed. 540. But a master's deed, given in foreclosure proceedings instituted before the mortgagor became bankrupt, is good. *Eyster* v. *Gaff*, 91 U. S. 521. And if a pledgor gives the pledgee power to sell without notice and to buy himself, the pledgee may enforce it according to its terms, after the pledgor has been adjudicated bankrupt. *In re Mertens*, 144 Fed. 818. Neither the pledgee nor the mortgagee need apply to the bankruptcy court or join the trustee. In the present case it would seem that the court relied upon the cases as to receiverships and disregarded the closely analogous cases of the preëxisting mortgage or pledge of a bankrupt's property. A receiver has very broad powers and is appointed not merely to collect and distribute assets, but also to carry on the business; and a distinction seems possible between tax deeds of property in his control and of property in the hands of a trustee in bankruptcy.

BILLS AND NOTES — NEGOTIABILITY — "PAYABLE ABSOLUTELY." — The defendant, a joint-stock company, issued coupon bonds payable out of the assets of the association, the stockholders, however, to be free from liability upon them. *Held*, that the bonds are not non-negotiable as being payable only out of a particular fund. *Hibbs* v. *Brown*, 190 N. Y. 167.

For a discussion of this case in the lower court, see 19 HARV. L. REV. 616.

CARRIERS — CUSTODY AND CONTROL OF GOODS — LIABILITY OF CARRIER TRANSPORTING DANGEROUS ANIMALS. — The defendant was transporting trained bears in one of his steamboats. Before delivery to the consignee the plaintiff, while lawfully on the defendant's dock, was injured by one of the